

MINUTES
CLAY COUNTY PLANNING COMMISSION
7:00 P.M., TUESDAY, MAY 17, 2016
MEETING ROOM B - THIRD FLOOR COURTHOUSE

Members Present: Mark Klevgaard, Tom Jensen, Jenny Mongeau, Bill Davis, Randy Schellack, Amos Baer, Tim Brendemuhl, Mike Hulett, Dan Langseth, Andrea Koczur, Frank Gross

Members Absent: David Heng

Others Present: Tim Magnusson, Colleen Eck, Jenny Samarzja, Zenas Baer, Ezra Baer, Jim Ramstad, Jenny Kjos, Barb Gilson, Jeff Bates, Bradley Dunham, Sarah Hardy, Rachel Hardy, Mary Beth Fevig, Dwight Fevig, Mike Habitt, Joel Baer, Jared Klemetson, Craig Halverson, Mary Colson, Shelley Steichen, Brock Langerud, Rick Muff

APPROVAL OF AGENDA

On motion by Andrea Koczur, seconded by Tom Jensen, and unanimously carried, the Commission approved the agenda with a request to hear the last public hearing first.

APPROVAL OF MINUTES

On motion by Tom Jensen, seconded by Bill Davis, and unanimously carried, the Commission approved the minutes from April 19, 2016 with one change under “Others Present.”

CITIZENS TO BE HEARD

There were no citizens to be heard

PROPOSED TEXT AMENDMENT TO CLAY COUNTY LAND DEVELOPMENT ORDINANCE

Clay County is considering a text amendment to the Land Development Code related to the definition of “Animal Unit.” The proposal would have the County adopt the “Animal Unit” definitions used by the State of Minnesota as set out in statute.

On motion by Tim Brendemuhl, seconded by Dan Langseth, and unanimously carried, the Commission opened the hearing.

Tim Magnusson stated that the same request came to the Planning Commission in 2006. At that time, the Planning Commission felt the current numbers serviced our purpose and County Board agreed. The County’s current Animal Units (AU) have been in place since 1981. The County’s use of the AU numbers is not for issuing a state feedlot permit, but to determine if an individual needs to bring a feedlot facility request to a Planning Commission meeting. The County’s threshold for issuing a Conditional Use Permit (CUP) is 250 AU which allows the County to look at a facility earlier on than it would if we used the state AU numbers. For example, the

County uses .4 AU for swine which translates to 625 animals, and constitutes 250 AU. The state has swine AU broken into three levels based on weight. Magnusson commented that it would be difficult for a staff person to count animals using three levels based on weight to determine if a County Conditional Use Permit (CUP) is needed. He added that if the state definition was used, the County would still require a CUP for a facility with 625 swine over 300 lbs. For nursery pigs less than 55 lbs.; however, no CUP or public review would be required unless there were 5,000 animals or more. The state allows County AU definitions/numbers to be more restrictive to insure the health, safety, and welfare of all residents.

Zenas Baer, representing Ezra Baer, stated that he had a power point to share concerning Animal Unit Definitions. He noted that with swine, weaning is generally done in 17 days. The nursery phase lasts until they are between 40 to 60 lbs. at eight to 10 weeks of age. The finishing hogs get up to 270 lbs., and are generally slaughtered at 21 weeks of age. He noted that Clay County does not differentiate based on weight, and just addressed the animals as “a hog is a hog” and “a chicken is a chicken.” He went on to comment that the County Board delegated the Planning Commission to hear and decide on applications for CUPs, Subdivisions, and Amendments to the County Code. This proposal needs to be viewed under a constitutional argument, considering a broad application across the board for the county. He stated that the county should look at an appropriate density at which livestock and poultry can be raised and it should be based on manure. The state sets the standard. All the AU numbers in the state definition are science-based, predictable, used in the CAFO definition, and are tied to the amount of manure produced. The size of the animal and the amount of manure produced matters, making the county AU numbers arbitrary. He added that the pig industry has changed and is much more specialized. An amendment would make things more consistent. He presented and read through all the side-by-side comparisons with the county and state AU definitions, and noted that nursery pigs have the most variance. Because of all the confusion it creates, Baer requested approval of the state AU definitions for the county.

Magnusson noted that he recently polled the other counties to see who has definitions that differ from the county. Stearns County has the state AU numbers, but he didn't hear back from the other counties.

The chair asked if anyone else wanted to speak for or against the proposal.

Jenny Kjos stated that she live one-half mile north of the Baer feeder pig operation. She had been assured that the operation would not interfere with their way of life, but noted that it DOES interfere and they can smell the pigs every day unless the wind is straight out of the south which doesn't happen that often. She noted that the county needs to consider the whole community, not just the farmers.

Rick Muff stated that he is a pork producer in Clay County and when he put up his barn the county's AU numbers were confusing for him.

Logan Langerud, also a pork producer, stated that the paperwork would be easier if the numbers were all the same across the board for the state and county.

In response to a question, Ezra Baer stated he has 1,000 nursery pigs and 2,000 finishing pigs at

his place.

Jenny Samarzja, Assistant County Attorney, asked how enforcement would be accomplished if the amendment is granted. Zenas Baer stated that Minnesota Pollution Control Agency (MPCA) takes over enforcement of feedlots over 50 AU (state number). The county is dealing with CUPs and setbacks. Mike Hulett asked how frequent the county has to do the math and was told that Hitterdal Hogs was the last new feedlot permitted through the County and that was over 10 years ago. Baers have had chicken feedlot expansions.

Craig Halvorson stated that he is the feedlot officer for Clay County and he follows the state numbers, but doesn't know the county numbers. When he goes out to a feedlot, it can be as simple as a grass waterway or an engineer coming out. He has never had to count animals. If he is on a compliance check, he isn't even allowed to enter a closed barn. He noted that there is a standard amount of space that a pig or steer needs, and he relies on the operators being honest. Zenas Baer added that no one ever counts animals, but a barn cannot hold more than the capacity it is built for. Dan Langseth stated that he has followed Halvorson's directives and has agreed with him. Frank Gross stated that he grew up on a farm and cannot see why the county would not want to be like the state. He noted that if someone was on the county line and the two counties went by different standards it would really be confusing.

Jenny Kjos asked about when expansions would come to the county for a Conditional Use Permit and how that would change. She noted that there is public review and notification when a permit comes through the Planning Commission. Craig Halvorson commented that state regulations also require public notice to property owners within a certain distance.

Magnusson noted that if the county goes with the state AU numbers, they should also review the threshold number in the ordinance. Samarzja agreed to address the threshold if a change is made.

Barb Gilson, Hawley, MN, stated that if we changed the definition, larger feedlot could go in without anyone having a notification or say in it. She noted that she agrees with Jenny Kjos.

Magnusson informed them that a feedlot between 49-250 AU is administration, and anything over 250 AU would need a public hearing.

Mary Colson stated that she lives by Ezra Baer's place and urges the Planning Commission to change the threshold limits if the definition is changed.

Grant Langerud stated that he is a hog producer, too, and noted that people generally get a little excited with higher numbers. He lives within 300 feet of his own hog facility and doesn't have a problem living there.

Joel Baer, Lake Park, stated that the definition defined by the state has science based numbers and if county is different than that, it's like a different language. He would like to see the same numbers and definitions used by state and county.

Jared Klemetson stated that he lives two miles north of a feedlot and has never had a problem at that distance. It doesn't really affect him, but he is 100 percent for making the change to state

numbers.

Zenas Baer noted that he would like to be part of the discussion with Magnusson and Samarzja regarding changes in the thresholds for Animal Units.

On motion by Jenny Mongeau, seconded by Andrea Koczur, and unanimously carried, the Planning Commission closed the public hearing.

On motion by Mike Hulett, seconded by Dan Langseth, and unanimously carried, the Planning Commission recommended adopting the State of Minnesota definition of Animal Units; and requested that staff and attorney meet to discuss appropriate thresholds for AUs and bring their recommendations back to the Planning Commission.

SARAH HARDY – INTERIM USE REQUEST- KENNEL BOARDING FACILITY

The applicant is seeking approval of an Interim Use Permit to allow the establishment of a dog and cat kennel/grooming/training facility. The affected property is an 8.02 acre parcel located in the SE Quarter SW Quarter, Section 1, T139N, R47W (Glyndon Twp.) in the Agricultural General and Flood Fringe zoning districts.

On motion by Randy Schellack, seconded by Dan Langseth, and unanimously carried, the Planning Commission opened the public hearing.

Tim Magnusson pointed out the other residences, all over 500 feet from the proposed site, along the other side of Highway 10. They are across a four-lane highway and have railroad tracks behind them so any the noise from the kennel should be attenuated. The proposed kennel facility and structures were also shown. The two-story kennel would include indoor areas and an outdoor fenced exercise space. They could house 25 dogs and 12 cats. The property re is a windbreak between the facility and highway. All the county standards for a kennel can be met. The applicant plans to have a flushing waste system for dogs and bag disposal for waste from cats. Magnusson noted that the waste disposal (waste water and septic) would need to be approved by Environmental Health. Any plumbing would need to be reviewed by the state. There appears to be ample room for client parking. The applicant would be living onsite and operating the business.

The applicant, Sarah Hardy, stated that the proposed waste disposal system is an eco-friendly waste system. The outside portion of the system has optional freeze protection and would run into the septic system. There are at least 10 of the same systems operational in Minnesota. The current septic system on the property is being inspected and she is waiting to hear if anything additional is going to be required. Hardy noted that she has had some decibel levels done and found that the highway noise is at 100-103 decibels and dogs can get up to 115, but the wind break at the property reduces that level. The dogs would all be put indoors at night. The dogs that would be housed upstairs dogs would be let out on a regular basis. Hours of operation would start at 6-7 a.m. and be down at 6-7 p.m. The existing barn would be used for the facility, but would be resided, a sprinkler system would be added, and it would have other updates as well. She is working with a consultant who has designed several hundred pet resorts. She would close on the property at the end of June.

The chairman asked if there is anyone for or against the proposal who would like to speak.

On motion by Randy Schellack, seconded by Tom Jensen, and unanimously carried, the Planning Commission closed the public hearing.

Tom Jensen commented that it looks like a well thought-out plan and seems like a reasonable location.

The Findings of Fact and Order were addressed by the Planning Commissioners as they pertain to the requested permit. All items can be addressed with conditions and none were found to warrant further discussion.

On motion by Tom Jensen, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission approved the request from Sarah Hardy for an Interim Use Permit to allow the establishment of a dog and cat kennel/grooming/training facility on a 8-acre parcel located in the SE ¼ SW ¼ Section 1, Glyndon Township, with the following conditions:

- 1) Signage is restricted to a maximum of 64 sq. ft.**
- 2) Maximum of 25 dogs and 12 cats, of any age, may be housed on the site at any given time.**
- 3) Prepare and submit a parking plan for a minimum of 5 parking spaces to the Planning Office for review and approval.**
- 4) Staff hours of operation 6 a.m. to 6 p.m., or as the applicant sees fit.**
- 5) Permit term expires upon sale of the property.**
- 6) Contact MnDOT for review and approval of requirements for the access changing from residential to commercial use.**

HOUGH INCORPORATED REQUEST FOR INTERIM USE-Gravel mining operation

The applicant is seeking approval of an Interim Use Permit to develop and operate a new gravel mine. Said mine is proposed to be approximately 53 acres in size. The parcel affected would be 52.73 acres in the E Half, NW Quarter, Section 18, T141N R44W (Goose Prairie Twp). Access to property is from 120th Avenue North, a Township road. Activities will include extraction, crushing/screening and stockpiling of materials. The property is in the Agricultural General and Resource Protection-Aggregate zoning districts.

On motion by Jenny Mongeau, seconded by Tim Brendemuhl, and unanimously carried, the Planning Commission opened the public hearing.

Tim Magnusson stated that the applicant is requesting to mine 46 acres. The threshold for a mandatory Environmental Assessment Worksheet (EAW) is excavating 40 or more acres of land to a mean depth of 10 feet or more. Magnusson noted that local engineering firms could charge between \$20 and \$25 thousand for an EAW and would take three to five weeks. Magnusson also received a letter from Mn Department of Natural Resources (DNR) addressing EAWs, and potential impacts to calcareous fens, rare features, wetlands and a designated trout stream, and storm water runoff.

Magnusson noted that it would make sense to have the same ingress and egress at the intersection used by the other trucks, but there would have to be a road built, going west across another property owner's land. If trucks used the south route that is in their proposal, a residence to the south would have truck traffic on two sides of them.

The applicant, Mike Hough, Hough, Inc, stated that he would like to amend the request to 39 acres. Attorney Samarzja noted that he would be allowed to reduce the acreage and have the hearing continue, addressing 39 acres for mining. Hough noted in order to reduce the acres to 39, they would eliminate the most southern few acres of the original site. They've already met with the township on the proposal. They would be willing to do work on 120th Street to handle truck traffic coming in and out at that location. They would use base one material for a stabilizer to benefit the structural part of the road. They were unable to get access to go west through Villiard's private property to 230th Street. Hough added that he has other mines in Clay County which are located east of Hawley and east of Barnesville. The aggregate at this site is approximately 37 feet deep. They would use a chloride product for dust control on the gravel road.

The chairman asked if there was anyone who wished to speak for or against the proposal.

Shelley Steichen stated that she has fenced pastureland for her cattle bordering Co. Rd. 33 (230 Street) and 120th Avenue, and wondered if the chemical they use for dust is safe from the animals. She noted that she has a number of concerns about the proposal, including safety. She referred to the gravel trucks and the numerous accidents there have been on Co. Rd 33. She called the sheriff's office today about monitoring that road, but was told they are not staffed to be out there regularly. She added that all the trucks are coming out on that road within a half mile of each other, and there are also two different bus routes on the road and many hills and dips. The applicant noted he heard that 120th Avenue would need to be improved. Co. Rd. 33 is the north/south paved road that comes straight north out of Hawley.

Andrea Koczur stated that the township would need to hire someone to work on that road. No one should work on a township road unless they are under contract.

Brad Dunham, Goose Prairie Township official, noted that Aggregate Industries has operated near this site for a long time. He stated that the township has never built up that road and it is not well-maintained. The base is not the best, and every bend has ruts in it. It's roughly a quarter mile long, and could be difficult for two vehicles to meet along there.

The applicant stated that their company is smaller. They would run their six trucks from this pit. If they had a larger job, they would have to sublease more truck drivers. Aggregate Industries subleases and pays the drivers by the load. He noted that he understands all the concerns and would take a route going west and coming out where the other trucks come out, but that landowner denied his request to come through his property.

Jeff Bates stated that he is also on the Goose Prairie Township board and lives just south of the site. He noted that the route to the west through the private property would be the best route. With a two-hour turn-around time, six trucks could add up to 36 trucks on the road per day. He

was concerned with safety issues where trucks would be turning. They did have three to four accidents on that road last year. Colson is the resident who would have truck traffic in all four sides of their property with the proposed route. If she would decide to put her property up for sale, it would be difficult to sell. The fence line shown on the aerial has been taken out. The property owner to the west of this site is not interested in traffic coming through his property. The preferable truck route shown would cut his field in half. There was mention that there can be many farm trucks on these roads as well. The township would also have to hire out to improve the road.

Mary Colson stated that she is the owner of the property that is sandwiched between dozens of trucks. She is one of four properties that is heavily affected by the operations. She noted that there doesn't appear to be much planning involved because pits are going in wherever, regardless of neighbors. She asked about other areas in the county where operations are using single accesses. Magnusson commented that it is not uncommon for gravel operators to combine road accesses and cooperate with dust control. Colson added that she is not necessarily against the mining proposal, but is opposed to the access. She commented that the county cannot put a high value on a person's property and then parallel with roads with trucks on all of them. She added that the landowners need as much consideration as the businesses.

Jenny Kjos stated that their residence is a mile to the south from the proposed access. She drives to Fargo-Moorhead every day and has nearly been killed by gravel trucks in that area already. She noted that feedlots have setback rules, but gravel pits seem to be pretty close to residences.

Shelley Steichen reported that there is a dip in the road that prevents a person from seeing the vehicle until it comes out of the dip. Last year a truck flipped over. There have been eight different accidents on Co. Rd. 33, with three of them being over a six week period last year. There is no signage and nowhere to pull over. There was mention that there should be signs on Co. Rd. 33 a mile north of here to warn of trucks coming.

On motion by Tom Jensen, seconded by Randy Schellack, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed by the Planning Commissioners as they pertain to the requested permit. The issues that arose during discussion involved items 1, 2, 4, 7, and 12 in the findings. The Commissioners were tasked with determining if there can be conditions placed on this permit to mitigate the potential impacts to make them non-issues. Eminent domain was mentioned, but could not be considered because this is for a private use, not a public use.

A motion was made by Mike Hulett and seconded by Bill Davis to deny the request. At that time, on motion by Jenny Mongeau, seconded by Randy Schellack, was carried with one nay vote (Tom Jensen), to table the public hearing to the 7 p.m. Planning Commission meeting on Tuesday, June 21, 2016.

KEVIN NATHE – REQUEST FOR REZONING

The applicant is seeking to rezone property from Highway Commercial to Agricultural General. If rezoning is approved it would allow the applicant to construct a new home on the property.

The proposed rezoning would affect a 20.1 acre parcel located in the NE Quarter, NW Quarter, Section 9, T139N, R46W (Riverton Twp).

On motion by Tom Jensen, seconded by Andrea Koczur, and unanimously carried, the Planning Commission opened the public hearing.

Tim Magnusson stated that the applicant could not be here (due to a death in the family). The proposed site is south of U.S. Hwy 10, across from the Buffalo River Speedway. Several years ago the applicant had rezoned this property to commercial, and now, because of personal circumstances, is requesting to rezone it back to Agricultural General allowing him to build another residence. The access to the site would remain the same. The flood plain issues would have to be worked out. Leaving it zoned as Highway Commercial would not allow him to build a house. Outlet Recreation has the commercially-zoned property adjacent to this parcel.

On motion by Mike Hulett, seconded by Tim Brendemuhl, and unanimously carried, the Planning Commission closed the public hearing

Tom Jensen motioned to deny the request, but that motion died due to lack of a second.

On motion by Mike Hulett, seconded by Randy Schellack, and approved with one nay vote (Tom Jensen), the Planning Commission made a recommendation to rezone property owned by Kevin Nathe from Highway Commercial to Agricultural General. The rezoning is for a 20.1-acre parcel located in the NE ¼ NW ¼ Section 9, Riverton Township. Said recommendation will be forwarded to County Board for final action.

On motion by Tim Brendemuhl and seconded by Tom Jensen, the meeting adjourned at 10:20 p.m.

Tom Jensen, Planning Commission Secretary